

CRIMINAL JUSTICE ACT PANEL ATTORNEY MANUAL

FOR
UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO



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TABLE OF CONTENTS

Introduction	
Composition and Management of CJA Panel	1
Appointment of Counsel	2
– Multiple defendants in one case	
– One defendant in multiple cases	
– Appointment of second counsel	
– Continuation of appointment	
Compensation and Expenses	3-5
– Itemization requirements	
– Hourly rates	
– Maximum compensation	
– Compensation in excess of statutory maximum	
Proration of Claims	5
Substitution of Counsel	5
Interim Vouchers	6
Travel and Out-of-Pocket Expenses	6-9
– Mileage claim requirements	
– Government Travel Account	
– Non-custodial transportation of defendant	
– Non-reimbursable items	
Legal Research	10
– Law student assistance	
– Computer assisted research	
Subpoenas and Witnesses	11
Interpreters	12
Investigative and Expert Services	12-14
– With prior approval	
– Without prior approval	
– Ex Parte Applications	
– Government travel for experts	
Psychiatric and Psychological Services	15
Appeals	16-17
Reimbursements of Transcripts	18

CRIMINAL JUSTICE ACT PANEL ATTORNEY MANUAL

District of Idaho

This manual is provided as a resource to assist the Criminal Justice Act (CJA) court-appointed attorney with administrative duties related to the court appointment.

Each panel attorney is referred to the Criminal Justice Act Plan for the District of Idaho, [General Order #134](#), which is on file in the U.S. Clerk's Office.

Questions are welcome. Please check the [Criminal Directory](#) to locate the appropriate deputy clerk.

Composition and Management of CJA Panel

The CJA Panel is designated by a Selection Committee and approved by the Court. [General Order #167](#). The panel is designed to be large enough to provide a sufficient number of experienced attorneys to handle the CJA case load, yet small enough so that panel members receive an adequate number of appointments to maintain their proficiency in criminal defense work and thereby provide a high quality of representation. Members serve at the pleasure of the Court.

Administration and management of the CJA Panel is centralized in the Clerk's Office to insure that counsel are appointed as expeditiously as possible, appointments are equitably distributed and information on availability of counsel is maintained.

Appointments are made in a manner which results in both a balanced distribution of appointments among members of the CJA Panel and quality representation for each CJA defendant. These objectives are accomplished by making appointments on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, or geographical considerations.

Each attorney is uniquely identified in the automated payment system by their Social Security Number. For purpose of reporting taxable income to the Internal Revenue Service, attorneys may use their firm Tax ID number. Questions regarding the appropriate use of these numbers should be directed to the Clerk's Office.

Appointment of Counsel

All initial appointments are made to the Federal Defender's Office. The defender's office will notify the Clerk's Office whenever their office is unable to represent a defendant. The Clerk's Office will then immediately locate counsel from the Criminal Justice Panel.

Multiple Defendants in One Case: Unless good cause is shown, separate counsel are normally appointed for each defendant in a criminal case involving more than one defendant. In the event an attorney is appointed to represent joint defendants, a separate CJA 20 voucher is prepared for each defendant, and it is necessary to complete a ["Waiver of Conflict of Interest"](#) form. An attorney may be compensated for the statutory maximum for each person. The time and expenses claimed should be prorated between each defendant.

One Defendant in Multiple Cases: Occasionally an attorney will be appointed to represent one defendant in more than one case. A separate CJA-20 voucher will be prepared on each case. The time and expenses claimed should be prorated between the cases.

Appointment of Second Counsel: An additional attorney may be appointed in a capital case if the court finds it is in the interest of justice. At least one of the attorneys must meet the requirements listed in 21 USC §848(q). Additional counsel may be appointed in complex or extended cases. Motion must be made to the presiding judge seeking payment of co-counsel before payment can be made. A CJA-appointed counsel may use the services of an associate counsel in out-of-court time without prior approval from the court. It may be at the discretion of the court to question excessive assistance from associates.

Continuation of Appointments: The appointment of an attorney continues until the conclusion of the case. Counsel will receive a new voucher from the Ninth Circuit if the case is appealed. If the case is appealed to a District Judge from a judgment rendered by the magistrate in a misdemeanor or petty offense case, a new voucher will be prepared by the District Court.

Absent special circumstances, whenever a case is transferred to another district such as under Rule 20, 21 or 40 Federal Rules of Criminal Procedure, a new appointment is completed in the transferee district.

Compensation and Expenses

The [CJA 20 voucher](#) is the form used for the compensation and reimbursement of expenses to appointed counsel. A billing statement itemizing in-court time, out-of-court time and expenses must be attached to all vouchers submitted for payment.

Pursuant to General Order #134, *vouchers are to be submitted to the Clerk's Office in Boise no later than 45 days after the final disposition of the case.* Every effort should be made to submit claims as soon as possible upon completion of services rendered. Vouchers which are submitted after the 45-day period must be accompanied by a motion and order authorizing payment of that voucher.

Itemization Requirements: Service hours **MUST** be reported in **tenths of hours**. Failure to do so may result in your voucher being returned for correction. Also, service hours **MUST** be categorized on the front of the voucher. Also, please categorize your billing statement to correspond with the items listed on the voucher.

Hourly Rates Check the [CJA Hourly Rate Chart](#) for applicable hourly rates.

Maximum Compensation [Provisions of the Criminal Justice Act \(CJA\) as amended by the Federal Courts Improvement Act of 2000](#) increased the maximum compensation allowed for each appointment.

In-Court time should be limited to that time specifically spent in Court. All other time may be included in the Out-of-Court category. Time spent at the courthouse awaiting the return of a Jury may be claimed as “in-court” time. Time spent before a Parole Board hearing may also be claimed as “in-court” time.

Time claimed for acceptance of the appointment or for preparation of the voucher will not be allowed.

Appointed counsel shall not accept a payment from or on behalf of the person represented without authorization by a U.S. Magistrate Judge, U.S. District Judge or U.S. Circuit Judge. If such payment is authorized, it is to be deducted from the claim to be approved by the Court under Subsection (d) of the Criminal Justice Act.

All vouchers should be submitted to the Clerk's Office, Boise, for initial auditing. The voucher for a case that is disposed of entirely before the U.S. Magistrate Judge will be forwarded to the appropriate magistrate for approval. The voucher for a case that concluded before a U.S. District Judge will be presented to the appropriate District Judge for approval even though the initial appointment was made by a U.S. Magistrate Judge.

Compensation in Excess of Statutory Maximum Payment in excess of the statutory maximum may be requested in "extended" and "complex" cases. A useful rule of thumb in determining whether a case is extended or complex is whether a trial was held. Other relevant factors may be:

- C The number of defendants in the case.
- C Unusual characteristics of the defendant (unable to speak English, mentally deficient, particularly uncooperative).
- C Location of defendant.
- C Type and number of crimes charged.
- C Complexity or novelty of legal issues.
- C Number of witnesses presented by all parties.
- C Amount of pretrial discovery and investigation required.
- C Number of pretrial motions in case; length of hearings; nature of hearings.
- C Amount of trial preparation required.
- C Length of trial.
- C Length of sentencing hearing; complexity of issues; severity of potential sentence.

Counsel claiming payment in excess of the statutory maximum shall submit with their voucher, a detailed memorandum supporting and justifying that the representation given was in an extended or complex case. In any case where the claim is in excess of the statutory maximum, the Chief Judge of the Ninth Circuit must approve payment. Upon substantiation of an excess payment to the District Judge, the claim will be submitted to the Chief Judge of the Ninth Circuit for approval.

Proration of Claims When a defendant is charged in one indictment with severable counts, one voucher is prepared and one maximum applies under Subsection (d)(2) of the Act, whether or not the counts are severed for trial. When a defendant is charged in two or more cases, a voucher is prepared and a separate maximum applies for each case, whether or not the cases are consolidated for trial.

When single counsel is appointed to represent multiple defendants, separate vouchers are prepared and a separate maximum applies for each defendant represented. In cases where one attorney is appointed to represent multiple material witnesses, one voucher is prepared and one maximum applies.

Whenever appointed counsel submit separate vouchers as provided by this section, time spent in common to more than one case or defendant must be prorated between the vouchers. Case numbers and/or defendant names should be cross-referenced on the vouchers. Time spent exclusively on any one case or defendant may properly be claimed on the voucher for that specific case or defendant.

Substitution of Counsel Counsel may only be substituted by an Order of the Court. If the court appoints a panel attorney, the person so appointed -- not another attorney in the firm -- shall represent the defendant at all stages of the proceeding unless upon petition to the court a substitute appointment is granted. This policy applies to the out-of-court time expended for brief writing and research completed by the attorney, as well as all in-court appearances, though associate counsel may assist from time to time.

Interim Vouchers

Appointed counsel may petition the court for payment of interim vouchers. A motion should be filed defining the extended difficulty and/or financial hardship to counsel caused by the case. The motion should be accompanied by a [proposed order](#).

Typically, Interim periods should be no less than three months beginning at the first of the month of the initial filing and continuing thereafter. The approximate billing size should be no less than \$2,500.

Travel and Out-of-Pocket Expenses

Travel and out-of-pocket expenses are not included in the statutory maximums allowed. All expenses claimed which are \$50.00 or over must be accompanied by receipts.

Travel Compensation may be approved for time spent in necessary and reasonable travel. Such compensation is at a rate not to exceed the rate provided in Subsection (d) of the Act for "time reasonably expended out-of-court."

Mileage Claims Mileage after January 21, 2002, may be claimed at 36.5 cents per mile for use of privately-owned vehicle. This is similar to the rate claimed by government employees and is subject to change. Mileage should be itemized by listing the following:

- C particular locations traveled to
- C number of miles traveled for each date; and
- C date of each travel event

Accordingly, expenses incurred for meals and lodging may be claimed when travel is required *away from home*. Though per diem in lieu of subsistence is not allowable, travelers should be guided by the prevailing limitations existing in the federal judiciary travel regulations. Please contact the clerk's office to inquire on the rate for the traveler's place of destination prior to travel. The Court in this District requires advance authorization for counsel's expenses and travel which would be in excess of that which is ordinary and prudent.

Government Travel Account In 1992, Congress passed legislation authorizing CJA attorneys and experts to obtain government travel rates when providing representation under the Criminal Justice Act. Attorneys and experts wishing to travel on the Government Travel Account (GTA) should use the following procedures:

- C Counsel shall forward to the Clerk's Office a [Request for a Travel Authorization](#). The Travel Authorization will be issued by the court and sent to the traveler. A Travel Authorization is an official government document and should enable the traveler to obtain government rates at hotels as well. This travel request may be faxed for expediency. If confidentiality is a factor, travel requests may be submitted to the court ex parte, in camera and will be placed under seal. A copy of the Travel Authorization must be carried during the authorized travel for identification purposes if required.

C After the authorization has been obtained, the attorney/expert shall call the "National Travel Service" (NTS) at its toll free "800" number indicated in the Travel Authorization and request tickets. The traveler would advise the NTS with the following:

- District Court Information
- Where the tickets are to be forwarded.
If necessary, tickets may be pre-paid
for pick-up at the airport.

The airline tickets will be paid by the court and the Government Travel Account (GTA) will be reconciled monthly by the Court. Copies of the airline ticket and the corresponding "Travel Authorization" should accompany the CJA voucher, **but should not be included in the payment.** Travel authorization in appeal cases will need to be arranged by the circuit clerk's office.

The National Travel Service is a "full-service" travel agency and can provide assistance with hotel reservations. Payment of hotel costs are not charged to the GTA account but are paid by the traveler and reimbursed on the CJA voucher.

Non-Custodial Transportation of Defendant Court-appointed counsel cannot be reimbursed for any transportation costs of the defendant. Defendants who reside a large distance from the court may make an [Application for Non-custodial Transportation by the U.S. Marshal Service](#). The Court will require the defendant to verify a financial status of indigency.

Other Expenses Out-of-pocket expenses reasonably incurred may be claimed on the voucher and must be itemized. Cost for in-house photocopying in excess of 15 cents per page will not be authorized.

Non-Reimbursable Items

the following:

Appointed counsel may not claim reimbursement for

- C General Office Overhead which includes such things as rent, telephone service and secretarial help.
- C Items of Personal Nature for or on behalf of the person represented, such as purchasing new clothes or having clothing cleaned, getting a haircut, cigarettes, candy or meals, etc. Also, the cost of services of a personal nature and expenses incidental thereto which cannot be considered legal representation and are not allowed. For instance, assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children, assisting the defendant in executing probation, or providing legal assistance in matters unrelated to the litigation of the case, although incidental to the defendant's arrest, etc.
- C Filing Fees for filing notices of appeal are not reimbursable. Appointed attorneys should not be required to pay a filing fee in a CJA case.
- C Printing of Briefs is not a reimbursable expense. However, the cost of mimeographing, xeroxing, or similar copying services are allowed.
- C Service of Process such as witness fees, travel costs and expenses for services of subpoenas on fact witnesses are not a reimbursable expense. [Motion and Order for Issuance of Subpoenas for Witnesses and Payment of Costs and Fees.](#)
- C Investigation or Other Services expenses under Subsection (e) of the Act shall not be considered out-of-pocket expenses. Claims for these services should be submitted on CJA Voucher 21 form.

Legal Research Expenses

Law Student Assistance The cost of employment of a law student for research may be considered an out-of-pocket expense **if** receipts are attached to the voucher showing proof of payment. The allowable portion shall include only the compensation paid to law students for legal research, but does not include reimbursement for out-of-pocket expenses, i.e. including but not limited to travel, lodging, meals, etc., incurred by a law student while doing research for appointed counsel. Whenever counsel incurs charges for assisted legal research by a law student, counsel should attach to the voucher the following:

- 1) a brief statement setting forth the issue or issues that were the subject matter of the research; and
- 2) an estimate of the number of hours of attorney-time that would have been required to do the same research; and
- 3) a copy of the bill or receipt showing payment/billing of law student time.

Computer Assisted Research Computer assisted legal research may be allowed as a reimbursable expense provided that the total amount approved does not exceed the total amount of attorney compensation that reasonably would have been approved if counsel had performed the research manually. Whenever counsel incurs charges for computer assisted legal research, counsel should attach to the voucher the following:

- 1) a brief statement setting forth the issue or issues that were the subject matter of the research; and
- 2) an estimate of the number of hours of attorney-time that would have been required to do the same research; and
- 3) a copy of the bill or receipt for the use of the equipment, or a statement used by counsel showing billing of computer assisted research expense.

Subpoenas and Witnesses

Service of process such as witness fees, travel costs and expenses for service of subpoenas are not reimbursable expenses. The United States Marshal serves all subpoenas for the government and for the defendants with court-appointed counsel, if so ordered by the Court. Do not hire a process server to serve subpoenas. (Refer to Federal Rule of Criminal Procedure 17(b).)

Before subpoenas can be served at government expense, it is necessary for court-appointed attorneys to seek approval from the appropriate Judge. An [Ex Parte Application and Order](#) should be submitted to the Court listing the names of the witnesses to be subpoenaed and their addresses. This should be accompanied by the completed subpoenas ready for issuance by the Court.

The Court will return a conformed copy of the Ex Parte Application and Order signed by the Judge authorizing issuance and service of the subpoena and payment of the costs and fees by the government. The Marshal's payment form, the Fact Witness Voucher, will be supplied to the appointed counsel for each witness subpoenaed. The voucher shall be prepared by appointed counsel for each witness prior to the appearance of those witnesses before the Court. Counsel shall be responsible for completing the portion above "Part I" and sections A and B of Part I. **Do not sign the attendance certification.**

After testifying, the witness should present the voucher to the Judge's Courtroom Deputy for certification. The witness may then submit the voucher to the U.S. Marshal's Office for payment.

Interpreters

The Clerk of Court shall maintain a local roster of certified, professionally qualified and language skilled interpreters and shall provide assistance to parties in locating available interpreters.

Interpreters for all criminal court hearings are provided by the Court and payment is made by the Clerk's Office. The Interpreter is appointed to the case by the presiding judicial officer as required by 28 USC §1827(d)(1), and unless good cause is shown, should handle all required interpreting services in that case.

Interpreters used while taking material witness depositions are scheduled by the United States Attorney and payment is made by the Department of Justice.

Interpreters required by court-appointed counsel when conversing with their clients, witnesses, etc. are arranged by the attorney and billing is submitted on a CJA-21 voucher to the Clerk's Office for payment.

[**General Order #136**](#) has established the hourly rate for out-of-court time for Interpreters, plus expenses, for certified or professionally-qualified interpreters .

Investigative Expert or Other Services

Investigative, expert or other services necessary to adequate representation, as authorized by subsection (e) of the Act, shall be available to persons eligible under the Act. Claims for these services should be submitted on [CJA-21 Voucher form](#).

All claims for services other than counsel, under subsection (e) of the Act, should include the following:

- C a statement as to type of service, dates and time expended.
- C an explanation of fee arrangement (i.e hourly rate, per diem, etc.)
- C an itemized statement of all expenses and supporting documentation for those expenses in excess of \$50.00.

Limitations **With Prior Authorization**, compensation for investigative, expert or other services is limited to \$1,000 per organization or individual, exclusive of reimbursement of expenses reasonably incurred. A separate authorization should be obtained for each type of service obtained for each defendant served. Payment in excess of \$1,000, exclusive of expenses, previously approved, shall be certified by the presiding judicial officer and approved by the chief judge of the Ninth Circuit. *If it is anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court. Applications for employment of experts and payment in excess of statutory maximum should indicate an estimated dollar amount for the service requested.*

Without Prior Authorization, compensation for investigative, expert or other services should not exceed \$300 plus reasonable expenses. This \$300 limit may be waived however if the presiding judicial officer, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization.

Ex Parte Applications *Ex parte* applications for expert services other than counsel, shall be heard *in camera*, and shall be placed under seal until the final disposition of the case, subject to further order by the court.

Government Travel for Experts

Experts wishing to travel on the GTA account

should use the following procedures:

- C The CJA counsel shall contact the court and submit in writing a [Request for Travel Authorization](#) for the travel of an expert. The Travel Authorization will be issued by the court and sent to the expert. A Travel Authorization is an official government document and should enable the traveler to obtain government rates at hotels as well. This travel request may be faxed for expediency. If confidentiality is a factor, travel requests may be submitted to the court ex parte, in camera and will be placed under seal. A copy of the Travel Authorization must be carried during the authorized travel for identification purposes if required.
- C After the authorization has been obtained, the expert may call the "National Travel Service" (NTS) at its toll free "800" number indicated in the Travel Authorization and request tickets. The traveler would advise the NTS with the following:
 - District Court Information
 - Where the tickets are to be forwarded.If necessary, tickets may be pre-paid for pick-up at the airport.

The airline tickets will be paid by the court and the GTA will be reconciled monthly by the Court. Copies of the airline ticket and corresponding "Travel Authorization" should accompany the CJA 21 Expert Services voucher when submitting for payment, **but should not be included in the claim**. The court will prefer the use of government rates in all possible instances in which a savings may be seen.

The National Travel Service is a "full-service" travel agency and can provide assistance with hotel reservations. Hotel costs should be claimed on the CJA 21 voucher and receipts in excess of \$50 should be attached. Though per diem in lieu of subsistence is not allowable, travelers should be guided by the prevailing limitations existing in the federal judiciary travel regulations. Please check with the court for the regulations for the place of destination prior to travel.

Psychiatrists, Psychologists

Chapter 313 of Title 18, as amended by the Insanity Defense Reform Act of 1984 (Chapter IV of the Comprehensive Crime Control Act of 1984), provides for court-directed psychiatric or psychological examination of individuals in connection with the various proceedings to determine mental condition which are authorized under the chapter. The functions of these separate proceedings are to determine:

- (1) the mental competency of a defendant to stand trial (18 USC §4241);
- (2) insanity at the time of offense (§4242);
- (3) the mental condition of an acquitted person hospitalized following a finding of not guilty only by a reason of insanity (§4243);
- (4) the present mental condition of a convicted defendant (§4244);
- (5) the present mental condition of an imprisoned person who objects to transfer to a treatment facility (§4245); and
- (6) the present mental condition of a hospitalized person due for release (§4246).

CJA funds are used to pay for psychiatric and related services obtained in accordance with subsection (e) of the CJA upon the determination that the services are "necessary for an adequate defense." These are "defense" services, where the defendant selects the expert and controls the disclosure of the expert's report. It is important to note that psychiatrists and related experts may be used in many circumstances in which payment is made from a source other than the CJA. [The Chart](#) summarizes payment responsibility for the various circumstances in which psychiatric and related services are utilized. The limitations of \$1,000 and \$300 apply to compensation claims submitted for "defense" services to be paid by the CJA appropriations. Compensation claims for psychiatric and related services to be paid by the Department of Justice should be referred to the U.S. Attorney or Assistant U.S. Attorney prosecuting the case.

Appeals

The appointment of an attorney continues if the case is appealed. Counsel will receive a new voucher from the Ninth Circuit. If the case is appealed to a District Judge from a judgment rendered by the magistrate in a misdemeanor or petty offense case, a new voucher will be prepared by the District Court.

If the appointed attorney wishes to withdraw as counsel of record, a motion for withdrawal should be made to the District Court within five days of the filing of the notice of appeal. After the [Appeal Briefing Schedule](#) has been completed and the appeal has been transmitted to the Ninth Circuit, motions for withdrawal must be made to the Ninth Circuit. If the Ninth Circuit grants the motion for withdrawal, the Magistrate Judge in Idaho will receive an order from the circuit court to appoint new counsel. The voucher will be prepared by the Clerk's Office and signed by the appropriate Magistrate Judge but should be submitted to the Ninth Circuit for payment at the conclusion of the appeal.

Due to the unavailability of funds for duplication of files, it is the responsibility of the withdrawing counsel to provide the file (or copies) and any transcripts in their possession to newly appointed counsel.

Pursuant to Ninth Circuit Rule 28-3-1, opening briefs and responsive briefs are limited to no more than 35 pages. Appellant's optional reply brief is limited to 15 pages. Notice of these limitations, as well as the filing deadlines will be given in a [Appeal Briefing Schedule](#) prepared by the Clerk's Office.

CJA panel attorneys are referred generally to Federal Rules of Appellate Procedure 10 and Ninth Circuit Rule 10-3 for the duties of counsel with respect to transcript designation and ordering.

No Transcripts Required

1. If no hearings were held, within ten days after filing the Notice of Appeal, the appellant shall file a [Transcript Designation and Ordering Form](#) in the District Court so stating that no transcripts will be ordered in Item "16" block. Even though a transcript will not be required, the Transcript Order Form **must** be filed with the court.
2. If hearings were held and the appellant determines that a transcript is not needed for the purpose of appeal, within 10 days after filing the Notice of Appeal, the appellant must notify the U.S. that no transcripts are desired.

If the U.S. serves the appellant with a notice that transcripts are needed, the appellant **must** order **all** transcripts designated by the appellee, or must certify to the District Court that the portions desired by the U.S. are unnecessary to the appeal. Fed. R. App. P. 10(a)(3), Ninth Cir. R. 10-3.3, Ninth Cir. R. 10-3.1(c).

If arrangements for transcript production are not be made within 21 days after the filing of the Notice of Appeal, the appeal may be subject to dismissal and the imposition of sanctions pursuant to Circuit Rule 42-1.

Transcripts Required

1. If the appellant wishes to order transcripts for purposes of the appeal, within ten days after the filing of the Notice of Appeal, the appellant shall serve on the prosecuting U.S. Attorney a notice of the portions of the transcript the appellant deems necessary and plans to order. If the appellant plans to order less than the entire transcript, a statement of issues on appeal must be provided to appellee. Fed. R. App. P. 10(b)(3), Ninth Cir. R. 10-3.1(a), 10-3.2(a).
2. The appellee has ten days to respond and notify the appellant of additional transcripts desired.
3. Within ten days after the appellant has notified the U.S. of the transcripts desired, or the U.S. has served the appellant with notice of the additional transcripts needed, the appellant **must** order **all** designated by both appellant and appellee, or must certify to the District Court that the portions desired by the U.S. are unnecessary to the appeal. Fed. R.App. P. 10(a)(3), Ninth Cir. R. 10-3.3, Ninth Cir. R. 10-3.1(c).

If arrangements for transcript production are not be made within 21 days after the filing of the Notice of Appeal, the appeal may be subject to dismissal and the imposition of sanctions pursuant to Circuit Rule 42-1.

4. A properly completed [CJA 24 form](#) should accompany the reporter's copies of the Transcript Ordering Form.
5. When supplemental transcripts are required, the appellant must complete and submit another Transcript Order Form, AO 435 and a CJA 24 form. Submission and distribution of these forms shall be as set forth above. If the court reporter cannot complete the supplemental transcripts by the original due date, the appellant shall request revision of the time schedule from the Court of Appeals.
6. If the appellant requests that the court reporter suspend transcript production at any time prior to the transcript being filed, the appellant must notify the Court of Appeals promptly, in writing, of the date and reasons for suspension of transcript production.

Reimbursement of Transcripts

The cost of court-authorized transcripts should be claimed on [CJA Form #24](#).

The following steps should be followed:

1. Contact the Judge's Court Reporter or Court Electronic Sound Recorder responsible for reporting the hearing needed.
2. Prepare the CJA Form #24 requesting the transcript and forward to the appropriate Court Reporter. It will then be forwarded to the appropriate judge for approval.

Payment is made to the Court Reporter by the Clerk's Office in Boise, Idaho.